



Office of the Attorney General of Guam

590 S. Marine Corps Dr., Ste. 706, Tamuning, Guam 96913



July 28, 2015

MEMORANDUM

REF: DRT 15-0297

To: Director, Department of Revenue and Taxation

From: Attorney General *EPO*

RE: Office of Public Accountability (Public Auditor) Access to Taxpayer Information

This Office is in receipt of your May 21, 2015 request for a legal opinion on the issue of whether 11 GCA § 15101 waives the confidentiality of a taxpayer who, pursuant to 11 GCA § 38101, receives tax credits as compensation for the involuntary condemnation of privately owned lands. Specifically, you pose the following questions:

1. Does the Section 15101(b) waiver of taxpayer confidentiality apply when the tax credit is not being used for delinquent taxes, but for current taxes due?
2. Does it [Section 15101(b) waiver] apply when the government is not accepting the real property or other property as settlement for any tax debt, current or delinquent, but is applying the tax credit as a payment in lieu of cash pursuant to Section 38101 against current taxes due?
3. Even if the waiver of taxpayer confidentiality does not apply, is the OPA authorized by any Guam law to review confidential taxpayer documents filed with DRT as part of her responsibility to conduct government audits?

In light of recent legislative developments, we first address Question No. 3 regarding whether the OPA is authorized to review taxpayer returns and other documents.

Title 11 GCA § 26120 is addressed to the confidentiality of tax returns and other taxpayer information, and the prohibition on public inspection and disclosure except in limited circumstances. As originally enacted, § 26120 did not address whether the Public Auditor is authorized to inspect tax returns and other information. However, on June 15, 2015, subsequent to the submission of your request, Bill 31-33, titled "An Act to Amend § 26120 Of Article 1, Chapter 26 Of Title 11, Guam Code Annotated, Relative to the Inspection of Tax Returns and Other Information Required to Be Filed or Furnished by the Taxpayer," was allowed to lapse into law and became Public Law 33-52. Guam law, as amended, now provides,

Nothing in this Section [11 GCA § 26120] shall limit the ability of the Public Auditor in the administration of his or her duties to access tax returns and other information required to be filed or furnished by the taxpayer, unless such

Re: Request for Attorney General Opinion regarding 11 GCA §§ 15101 and 38101

REF: DRT 15-0297

July 28, 2015

~Page 2

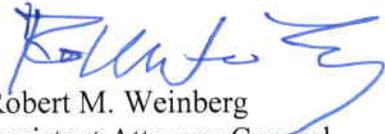
information is specifically privileged by the Internal Revenue Code of the United States. Any information provided to the Public Auditor or any person employed by the Public Auditor under this Section shall be considered "privileged" pursuant to § 1909.1 of Chapter 19, Title 1, GCA. Disclosure of a privileged communication or privileged information in violation of this Section shall be a felony of the third degree.

Public Law 33-52, Section 1.

Public Law 33-52 expressly authorizes the Public Auditor, in the administration of her duties, to access tax returns and other taxpayer information, unless the information is specifically privileged by the U.S. Internal Revenue Code. For purposes of this memorandum, it is the opinion of this Office that such access is now available to the Public Auditor, notwithstanding whether a waiver of confidentiality as provided by 11 GCA § 15101(b) applies in a specific situation. Accordingly, we believe the Legislature has resolved the central issue presented by your request as it pertains to the Public Auditor's access to taxpayer documents, and that your remaining questions regarding the § 15101(b) waiver of confidentiality are moot.

For further information concerning this matter, please use the reference number shown above.

OFFICE OF THE ATTORNEY GENERAL

By: 
Robert M. Weinberg
Assistant Attorney General